

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 201900170	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/12/2017 12:55 AM	Location of Incident: [REDACTED]	Precinct: 40	18 Mo. SOL 1/12/2019	EO SOL 1/12/2019	
Date/Time CV Reported Sat, 01/05/2019 6:55 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 01/05/2019 6:55 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Destefano	7166	954727	040 PCT
2. An officer			040 PCT
3. Officers			040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Mardjonovic	6319	955123	040 PCT
2. SGT Brian Kovall	4460	942023	040 PCT
3. POM Juan Santiago	09507	951206	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Destefano	Abuse: Police Officer Brian Destefano stopped § 87(2)(b)	[REDACTED]
B. Officers	Abuse: Officers stopped § 87(2)(b)	[REDACTED]
C. Officers	Abuse: Officers stopped § 87(2)(b)	[REDACTED]
D. Officers	Abuse: Officers stopped § 87(2)(b)	[REDACTED]
E.POM Brian Destefano	Abuse: Police Officer Brian Destefano frisked § 87(2)(b)	[REDACTED]
F. An officer	Abuse: An officer frisked § 87(2)(b)	[REDACTED]
G. An officer	Abuse: An officer frisked § 87(2)(b)	[REDACTED]
H. An officer	Abuse: An officer frisked § 87(2)(b)	[REDACTED]
I. An officer	Abuse: An officer searched an individual.	[REDACTED]
J.POM Brian Destefano	Force: Police Officer Brian Destefano used physical force against § 87(2)(b)	[REDACTED]
K.POM Brian Destefano	Force: Police Officer Brian Destefano used physical force against § 87(2)(b)	[REDACTED]
L.POM Brian Destefano	Abuse: Police Officer Brian Destefano searched § 87(2)(b)	[REDACTED]

Case Summary

On January 5, 2019, § 87(2)(b) a reporting non-witness, filed this complaint on the CCRB's website on behalf of her son, § 87(2)(b) who was § 87(2)(b) -years old at the time of the incident.

On July 12, 2017, at approximately 12:55 a.m., § 87(2)(b) was outside § 87(2)(b) in the Bronx. Police Officer Brian Destefano of the 40th Precinct and additional officers allegedly stopped § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g) Officers allegedly stopped § 87(2)(b) and § 87(2)(b) (**Allegations B-D: Abuse of Authority**, § 87(2)(g) PO Destefano allegedly frisked § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g) An officer allegedly frisked § 87(2)(b) and § 87(2)(b) (**Allegations F-H: Abuse of Authority**, § 87(2)(g) An officer allegedly searched § 87(2)(b) (**Allegation I: Abuse of Authority**, § 87(2)(g) PO Destefano allegedly performed a forcible take down of § 87(2)(b) (**Allegation J: Force**, § 87(2)(g) PO Destefano allegedly kicked § 87(2)(b) in the face (**Allegation K: Force**, § 87(2)(g) PO Destefano allegedly searched § 87(2)(b) (**Allegation L: Abuse of Authority**, § 87(2)(g)

There is no video evidence in this case.

No arrests or summonses resulted from this incident.

This complaint was filed a week before the 18-month statute of limitations expired.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Brian Destefano stopped § 87(2)(b)

Allegation B – Abuse of Authority: Officers stopped § 87(2)(b)

Allegation C – Abuse of Authority: Officers stopped § 87(2)(b)

Allegation D – Abuse of Authority: Officers stopped § 87(2)(b)

§ 87(2)(b) testified he went by himself to a bodega at § 87(2)(b) (BR01). The store locks its doors late at night and takes orders through a walk-up window on the sidewalk. § 87(2)(b) ordered food and waited on the sidewalk. Two black male teenagers and a black female adult were also standing outside the bodega. § 87(2)(b) does not know these people. Multiple marked police vehicles and an unmarked police vehicle stopped in front of the bodega. Five officers dressed in plainclothes, backed by uniformed officers, approached and surrounded § 87(2)(b) and the two male teenagers on the sidewalk. § 87(2)(b) denied that he had any interaction with any individual near the bodega prior to being stopped by officers.

§ 87(2)(b) testified he did not know the identity of any of the individuals stopped during this incident. § 87(2)(b) said that an acquaintance from the neighborhood, known only to § 87(2)(b) as "§ 87(2)(b)" arrived during the incident. However, § 87(2)(b) had no contact information for him.

§ 87(2)(b) and § 87(2)(b) were identified as alleged victims in this incident based on Stop, Question, and Frisk reports and warrant audit results associated with this

incident (BR02-03). Contact attempts were made to all modes of contact found for § 87(2)(b) and § 87(2)(b) revealed from searches of the NYC Booking and Arraignment Disposition System (BADs), CLEAR, and LexisNexis databases. No working contact information was found for these individuals. As a result, no statement could be obtained from § 87(2)(b) and § 87(2)(b) about the incident.

NYPD records revealed that four Stop, Question, and Frisk reports were prepared regarding this incident. Collectively, the four reports reflect that officers responded to a radio run regarding a robbery in progress at § 87(2)(b). Upon arriving, the alleged robbery victim pointed at individuals and stated, “He’s one of them.” The reports reflect that four individuals were stopped. The reports reflect that it was ultimately determined that no crime had been committed. No other documents related to the reported robbery were identified.

Event documents and the associated 911 recordings and police radio communications related to this incident were not received. A response from the NYPD Communications Division stated that while these records are typically retrievable for five years, the records associated with this incident could not be accessed due to an unknown error (BR04).

PO Destefano stated that he responded to a radio run regarding a robbery in progress at § 87(2)(b) (BR05). PO Destefano did not remember if any details about the incident were provided over the radio, such as the circumstances of the robbery or descriptions of suspects. Immediately upon arriving at the location, PO Destefano encountered a Hispanic male who frantically pointed at two males, including § 87(2)(b) who were by themselves in front of § 87(2)(b) and said, “They robbed me.” PO Destefano immediately approached § 87(2)(b) by himself intending to place him under arrest for robbery given the identification by the robbery victim.

A stop may be conducted when an officer possesses reasonable suspicion that a person has committed, is committing, or is about to commit a crime. People v. De Bour, 40 N.Y.2d 210 (1976) (BR06).

Given that PO Destefano acknowledged approaching § 87(2)(b) by himself with the intent to detain him based on the information provided by the alleged robbery victim, a stop allegation is only pled against PO Destefano regarding § 87(2)(b).

Given that § 87(2)(b) denied having any knowledge about the identities of the other individuals stopped during this incident, the investigation had no way to differentiate which officers were involved with each of the identified victims. Therefore, Allegations B-D are pled against officers.

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b), § 87(2)(g)

Allegation E – Abuse of Authority: Police Officer Brian Destefano frisked § 87(2)(b)

Allegation F – Abuse of Authority: An officer frisked § 87(2)(b)

Allegation G – Abuse of Authority: An officer frisked § 87(2)(b)

Allegation H – Abuse of Authority: An officer frisked § 87(2)(b)

Allegation I – Abuse of Authority: An officer searched § 87(2)(b)

§ 87(2)(b) testified that PO Destefano approached § 87(2)(b) and ordered him to remove his hands from his pockets. § 87(2)(b) complied. PO Destefano patted down § 87(2)(b)'s chest, waist, and shorts pockets over his clothing. At the same time, other officers frisked the other individuals. An officer reached into the pockets of one of the other individuals and removed money and headphones from this unknown individual's pockets.

PO Destefano testified that he did not frisk § 87(2)(b). However, PO Destefano prepared a Stop, Question, and Frisk report which reflects that PO Destefano frisked § 87(2)(b) because he was suspected of having committed a violent crime. The Stop, Question, and Frisk report was presented to PO Destefano during his CCRB interview and seeing this document did not refresh PO Destefano's recollection regarding this aspect of the incident. PO Destefano did not remember if he made any observation that made him suspect § 87(2)(b) possessed a weapon. PO Destefano knew that other officers approached the other stopped individuals, but had no knowledge of what happened with them because PO Destefano was primarily dealing with § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation J – Force: Police Officer Brian Destefano used physical force against § 87(2)(b)

Allegation K – Force: Police Officer Brian Destefano used physical force against § 87(2)(b)

§ 87(2)(b) testified that PO Destefano and another officer attempted to pull his arms behind his back. § 87(2)(b) pulled his left arm away from PO Destefano and said he did not want to get handcuffed unless the officers told him why. Aside from pulling his left arm, § 87(2)(b) denied he made any other movements and he denied that he took any steps or tried to walk away. PO Destefano allegedly pulled § 87(2)(b)'s arm behind § 87(2)(b)'s back, leg swiped at § 87(2)(b)'s legs, and pushed him to the ground. § 87(2)(b) fell on the right side of his body. On the ground, § 87(2)(b)'s right arm was stuck underneath his body and PO Destefano had control of § 87(2)(b)'s left arm. § 87(2)(b) denied that he pulled his arm away from officers. PO Destefano and another officer handcuffed § 87(2)(b) and started to pick him up from the ground. PO Destefano allegedly kicked § 87(2)(b) on the left side of his face on his left cheek below his eye. The kick resulted in swelling and a cut under his left eye. § 87(2)(b) said he took photos of his injuries taken after the incident, however he and § 87(2)(b) were unable to find these photos for the investigation.

§ 87(2)(b) was taken by his mother, § 87(2)(b) to § 87(2)(b) Hospital for treatment after the incident. Medical records from the hospital and the Ambulance Prehospital Care Report were obtained (BR07). The Prehospital Care Report notes that § 87(2)(b) complained of pain to his jaw and wrists after a “physical altercation” with officers. The reporting medical personnel noted no injuries on the report. The records from the hospital reflect § 87(2)(b) made the same complaints of pain to his face. The medical evaluation revealed abrasions on the right side of § 87(2)(b)'s face. No details about the incident are noted in the medical records from § 87(2)(b) Hospital. § 87(2)(b) told medical personnel that she intended to pursue a lawsuit against the NYPD for wrongful arrest.

PO Destefano testified that he approached § 87(2)(b) intending to arrest him for robbery. PO Destefano told § 87(2)(b) who was sitting, to stand up. § 87(2)(b) stood up. PO Destefano grabbed § 87(2)(b)'s left wrist. § 87(2)(b) turned and started running up the street, dragging PO Destefano a couple of steps. § 87(2)(b) and PO Destefano fell to the ground as a result of the momentum of § 87(2)(b)'s attempted flight. PO Destefano denied leg sweeping § 87(2)(b)'s legs or pushing him to the ground. On the ground, § 87(2)(b) pulled his right arm underneath his stomach which prevented PO Destefano from handcuffing him. PO Destefano pulled § 87(2)(b)'s arm free and handcuff him by himself. PO Destefano picked up § 87(2)(b). PO Destefano denied kicking § 87(2)(b) in the face.

PO Juan Santiago of the 40th Precinct testified that he had no recollection of the incident (BR08). A Threat, Resistance, and Injury (TRI) Report was prepared which reflects that PO Santiago assisted in restraining § 87(2)(b) (BR09). This information did not refresh PO Santiago's recollection of the incident.

§ 87(2)(b), § 87(2)(g)

Allegation L – Abuse of Authority: Police Officer Brian Destefano searched § 87(2)(b)

§ 87(2)(b) testified that he was picked up from the ground and brought beside a police car. PO Destefano allegedly searched § 87(2)(b)'s pockets and removed the contents which consisted of a cell phone, headphones, and benefits card. § 87(2)(b) was released from the scene.

PO Destefano denied searching § 87(2)(b). However, during his CCRB interview, PO Destefano was shown a Stop, Question, and Frisk report he prepared which reflects that he searched § 87(2)(b) after frisking § 87(2)(b) and detecting a hard object in his pocket. Seeing this information did not refresh PO Destefano's recollection regarding this aspect of the incident. Sgt. Brian Kovall of the 40th Precinct interviewed the 911 caller and ultimately determined that no crime was committed for which § 87(2)(b) or any of the other stopped individuals could be arrested. § 87(2)(b) and the other individuals were released.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint in which § 87(2)(b) and § 87(2)(b) are parties (BR10).
- PO Destefano has been a member of the service for five years and has been a subject in one prior CCRB complaint involving one allegation which was not substantiated.
 - 201609848 involved an allegation that PO Destefano pushed a civilian and was closed by the Board as complainant uncooperative.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 25, 2019, the NYC Office of the Comptroller has no record of a Notice of Claim having been filed regarding this incident (BR11).

- According to the Office of Court Administration (OCA), as of April 29, 2019, § 87(2)(b) and § 87(2)(b) have no history of convictions in NYC (BR12-14).

Squad No.: 13

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date